

**BEFORE THE  
U.S. DEPARTMENT OF ENERGY  
Washington, D.C. 20585**

In the Matter of:

**Perlick Residential & Hospitality  
Products,  
Respondent**

Case Number: 2010-SE-0109

**COMPROMISE AGREEMENT**

The U.S. Department of Energy Office of the General Counsel initiated this action against Perlick Residential & Hospitality Products ("Respondent") after DOE's ENERGY STAR® Verification Testing Pilot Program testing showed that refrigerator model HP72ROO-S had an energy consumption of 1383 kWh/yr—almost three times the federal maximum usage standard of 462.3 kWh/yr. DOE also discovered Respondent had not properly certified its refrigerators, refrigerator-freezers and freezers. Respondent on behalf of itself and any parent, subsidiary, division or other related entity and DOE, by their authorized representatives, hereby enters into this Compromise Agreement for the purpose of settling this civil penalty action.

**I. DEFINITIONS**

For the purposes of this Compromise Agreement, the following definitions shall apply:

- (a) "Act" means the Energy Policy and Conservation Act of 1975, as amended, 42 U.S.C. § 6291 *et seq.*
- (b) "Adopting Order" means an Order of the General Counsel adopting the terms of this Compromise Agreement without change, addition, deletion, or modification.
- (c) "DOE" means the U.S. Department of Energy.
- (d) "DOE Rules" means DOE's energy conservation regulations found in Title 10, Part 430, of the Code of Federal Regulations.
- (e) "Parties" means DOE and Respondent.
- (f) "Respondent" means Perlick Residential & Hospitality Products.

## II. RECITALS

WHEREAS, DOE, pursuant to 42 U.S.C. § 6291 *et seq.*, is responsible for the promulgation and enforcement of the energy conservation requirements set forth in DOE Rules; and

WHEREAS, DOE has promulgated energy conservation standards for refrigerators, refrigerator-freezers and freezers at 10 C.F.R. § 430.32 and requires manufacturers to submit information and reports to insure compliance with those standards at 10 C.F.R. § 430.62; and

WHEREAS, testing pursuant to DOE's ENERGY STAR® Verification Testing Pilot Program showed that refrigerator model HP72ROO-S had an energy consumption of 1383 kWh/yr—almost three times the federal maximum usage standard of 462.3 kWh/yr.

WHEREAS, Respondent admits:

1. Respondent manufactures and distributes refrigerators, refrigerator-freezers and freezers, including but not limited to basic models HP72ROO-S, HP15R, HP24R, HP24F, HP48FR, HP48RO, HC24RB, HA24FB, and HA24RB.
2. These products have been in distribution in the United States at least since December 29, 2009.
3. As of December 29, 2010, Respondent had not submitted the required certification report and compliance statement for these basic models of refrigerators, refrigerator-freezers, and freezers;
4. Respondent has sold one unit of HP72ROO-S since it began offering the model for distribution in commerce in the U.S.; and
5. Respondent has not sold any units of HP72ROO-S to consumers, as DOE purchased the one unit that has been sold in the U.S.
6. The unit of HP72ROO-S sold to DOE failed to meet the applicable energy conservation standard.

WHEREAS, DOE, as the agency charged with developing and administering a balanced and coordinated national energy policy, concludes that, in light of the circumstances, this Compromise Agreement properly balances the policies recognized in the Energy Policy and Conservation Act and is the appropriate way to resolve this matter;

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements set forth below, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree as follows:

## III. TERMS OF THE AGREEMENT

1. **Adopting Order.** The Parties agree that the provisions of this Compromise Agreement shall be subject to final approval by the General Counsel by incorporation of such provisions by reference in the Adopting Order without change, addition, modification, or deletion.

2. **Obligations of Respondent.**

- a. Respondent agrees to immediately cease offering refrigerator model HP72ROO-S, a 72-inch wide under-counter refrigerator, for distribution in commerce in the United States.
- b. If this Compromise Agreement is executed by February 10, 2011, Respondent agrees to pay the sum of \$5,000, as full satisfaction of the possible penalty for failing to certify in accordance with 10 C.F.R. § 430.62, within 30 days of the issuance of an Adopting Order.
- c. Within thirty (30) calendar days following the date of the Adopting Order, Respondent will certify in accordance with 10 C.F.R. § 430.62 all basic models Respondent offers for distribution in commerce in the United States.
- d. Respondent agrees to pay \$150 per day for each day in excess of sixty (60) calendar days following the date of this agreement for each basic model it fails to certify in accordance with 10 C.F.R. § 430.62.

3. **Obligations of DOE.**

- a. In express reliance on the covenants and representations in this Compromise Agreement and to avoid further expenditure of public resources, DOE agrees to accept Respondent's payment pursuant to paragraphs III.2.a. and III.2.c. in full satisfaction of the penalty authorized by the Act.
- b. DOE agrees promptly to issue an Adopting Order adopting this Agreement.
- c. DOE agrees to terminate the enforcement action with prejudice upon Respondent's completion of its Obligations in accordance with Paragraph 2 above.

4. **Jurisdiction and Governing Law.** This Compromise Agreement is entered pursuant to DOE's authority to interpret and enforce its rules for energy efficiency and to enter into its own agreements interpreting and applying those rules. The Parties agree that DOE has jurisdiction over Respondent and exclusive jurisdiction over the matters contained in this Compromise Agreement and has the authority to enter into this Compromise Agreement.

5. **Effective Date.** The Parties agree that this Compromise Agreement shall become effective on the date on which the General Counsel issues the Adopting Order. Upon release, the Adopting Order and this Compromise Agreement shall have the same force and effect as any other Order of the General Counsel. Any violation of the Adopting Order or of the terms of this Compromise Agreement shall constitute a separate violation of an agency Order, entitling DOE to exercise any rights and remedies attendant to the enforcement of an Agency Order.

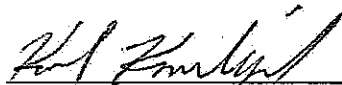
6. **Waivers.** Respondent agrees to waive notice and hearing pursuant to 42 U.S.C. § 6303. Respondent agrees not to seek judicial review or otherwise contest or challenge the validity of the terms and penalties set out in this Compromise Agreement, including any right to judicial review that may be available to the Respondent. If either Party (or the United States on behalf of DOE) brings a judicial

action to enforce the terms of this Compromise Agreement, neither Respondent nor DOE shall contest the validity of the Compromise Agreement, and Respondent waives any statutory right to a trial *de novo*. Respondent hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504, relating to the matters addressed in this Compromise Agreement.

7. **Final Settlement.** The Parties agree and acknowledge that this Compromise Agreement shall constitute a final settlement between the Parties. This Compromise Agreement resolves only the violations alleged in the Notice.
8. **Merger.** This Compromise Agreement constitutes the entire agreement between the Parties and supersedes all previous understandings and agreements between the Parties, whether oral or written.
9. **Modifications.** This Compromise Agreement cannot be modified without the advance written consent of both Parties.
10. **Invalidity.** In the event that this Compromise Agreement in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.
11. **Authorized Representative.** Each party represents and warrants to the other that it has full power and authority to enter into this Compromise Agreement.
12. **Counterparts.** This Compromise Agreement may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.



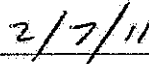
Timothy G. Lynch  
Deputy General Counsel for  
Litigation and Enforcement  
U.S. Department of Energy



Karl Krumbiegel  
Project Engineer  
Perlick Corporation



Date



Date